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STATE OF ALABAMA
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Honorable Jay M. Ross
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Elections – Polling Places – County
Commissions – Emergencies

The Mobile County Commission may not establish voting centers pursuant to section 17-6-4 and under the procedures set out in its local law before the Runoff Election.

The Mobile County Commission may move or consolidate voting places located within a precinct within three months of an upcoming election if it finds that such measures are necessary as a result of an emergency situation.

Dear Mr. Ross:

This opinion of the Attorney General is issued in response to your request.

QUESTION

May the Mobile County Commission, upon finding that an emergency need exists, utilize the “voting centers” procedure outlined in section 17-6-4

of the Alabama Code for the consolidation of two or more polls in the Primary Runoff Election?

FACTS AND ANALYSIS

You indicate in your request that, due to the ongoing COVID-19 pandemic, you will not be able to conduct the upcoming Primary Runoff Election scheduled for July 14, 2020 in compliance with Section 17-6-4(d) of the Code of Alabama while maintaining the public health and safety. Section 17-6-4(d) precludes a county commission from changing the location of voting places “within three months before an election is to be held.” ALA. CODE § 17-6-4(d) (2006). To address this concern, you ask if you may consolidate two or more voting places after finding that an emergency exists.

On March 13, 2020, Governor Kay Ivey declared that the COVID-19 novel coronavirus presented a state public health emergency, basing her proclamation on her authority pursuant to section 31-9-8(a) of the Code of Alabama. *See* opinion to Honorable John H. Merrill, Secretary of State, dated March 17, 2020, A.G. No. 2020-020. Following this declaration, on March 18, 2020, Governor Ivey rescheduled the Primary Runoff Election from March 31, 2020 to July 14, 2020.

You state in your request that, in conducting the Primary Runoff Election, Mobile County intends to comply with the recommended guidelines set out by the United States Centers for Disease Control and Prevention (“CDC”) for conducting elections during the pandemic. These guidelines include using personal protective equipment and social distancing for both election officials and voters and urging election officials aged 65 years or older (a category constituting at least 75 percent of the election officials who served in the March 3, 2020 Primary Election) to stay at home and avoid contact with other people. Based on concerns in meeting applicable election laws and the CDC guidelines, you conducted an assessment of the facilities used in the first Primary Election and determined that 46 out of 88 poll locations would not be able to accommodate the same number of election officials used in the Primary Election. Furthermore, two of the locations are not available for the Primary Runoff Election, and many of the locations that would be able to accommodate the same number of election officials would not be able to accommodate more than a “handful” of voters if the CDC’s social distancing guidelines are followed. Based on these concerns, you ask if, upon finding an emergency need exists, you may consolidate two or more voting places on a one-time basis for purposes of the Primary Runoff Election.

You ask specifically whether you may use the “voting centers” procedure outlined in section 17-6-4(c) of the Code of Alabama. That provision, however, does not appear to be designed for an emergency such as the COVID-19 pandemic as it requires a local law to be passed for a voting center to be established by combining voters from multiple precincts and does not contain any exemptions from the prohibition against changing voting places within three months of an election. ALA. CODE § 17-6-4(c) (2006). Mobile County, in fact, has already passed a local act which authorizes the creation of voting centers. According to Section 2(a) of Act No. 812, Acts of Alabama 1965, Vol. II, p. 1515, “[s]ubject to the provisions of subsection (b), when the use of voting machines at elections in the county has been, or shall hereafter be authorized, ***the county governing body of the county shall have the authority to designate a voting center*** in each ward and precinct within the county.” Ala. Acts No. 1965-812, § 2(a). (emphasis added). Subsection (b), however, provides that “[e]xcept as herein expressly provided, in designating voting centers, ***the county governing body shall be subject to all other laws applicable to the governing body of a county, regarding the change or establishment of the districts of a precinct***” Ala. Acts No. 1965-812, § 2(b). (emphasis added). Consequently, although you would have the authority to establish new voting centers, such a decision would be subject to section 17-6-4(d) and could not result in a change in a voting place within three months of the election.

Although you would not be able to rely on voting center procedures to consolidate voting places before the Runoff Election, county commissions may change voting places within a precinct if necessary to address an emergency. In its opinion to Honorable Edwin L. Davis, Attorney, Macon County Commission, dated September 7, 1984, A.G. No. 84-00446, this Office held that, after finding that the county courthouse was unsafe as a polling place due to defective electrical wiring, the county commission could temporarily designate another location within the same precinct until the courthouse was made safe. This Office stressed that directions to the new temporary polling place should be clearly posted at the old location and that, if necessary, assistance should be provided in locating the new location. Similarly, in its opinion to Honorable W. N. Watson, Attorney, DeKalb County Commission, dated September 1, 1999, A.G. No. 99-00273, a church withdrew permission to be used as a polling place within three months of an upcoming election. This Office held that the county commission could reasonably declare that an emergency existed requiring the selection of a new location for the polling place and encouraged the commission to give as much notice as possible to the affected voters.

Just as in the *Davis* and *Watson* opinions, an emergency situation exists in Mobile County approaching the Runoff Election to be held on July 14, 2020.

The Governor has declared that the COVID-19 pandemic has created a public health emergency and, in accordance with this declaration, the CDC has issued guidelines urging poll workers 65 years of age or older to stay at home and advising that social distancing standards be maintained. Accordingly, although it may not establish voting centers pursuant to section 17-6-4 and under the procedures set out in its local law before the Runoff Election, the Mobile County Commission may timely move or consolidate voting places *within a precinct* if it finds that such measures are necessary to comply with the applicable election laws, the Governor's proclamation, and the CDC guidelines in conducting the Runoff Election. In taking such measures, the Commission should give affected voters as much notice as possible, post clearly marked directions to the new polling location at the old polling location, and give any necessary assistance in locating the new polling location.

CONCLUSION

The Mobile County Commission may not establish voting centers pursuant to section 17-6-4 and under the procedures set out in its local law before the Runoff Election.

The Mobile County Commission may move or consolidate voting places located within a precinct within three months of an upcoming election if it finds that such measures are necessary as a result of an emergency situation.

I hope this opinion answers your question. If this Office can be of further assistance, please contact John Porter of my staff.

Sincerely,

STEVE MARSHALL

Attorney General

By:



BEN BAXLEY
Chief, Opinions Section